Supreme Court, U.S.
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92-318

No. _____

In The

Supreme Court of the United States

October Term, 1992

PATRICIA COYLE GILMAN,

Petitioner,

vs.

ROBERT H. GILMAN,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

SUE L. WISE
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QUESTIONS PRESENTED

Does the due process clause of the Fourteenth Amendment and concerns of fundamental fairness prohibit dismissal of the appellant's appeal for failure to file a brief within the time prescribed when the inability to file resulted from emergency illnesses and deaths in the immediate family of petitioner's counsel?

Whether Petitioner was denied her right to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution, when the Connecticut Appellate Court dismissed her appeal from a judgment dissolving her marriage, without deciding the merits of the appeal, where the brief on appeal was filed after the due date but before argument on the motion to dismiss, and where the delay was due solely to family and medical emergencies of petitioner's counsel?

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Petition For A Writ Of Certiorari To The Supreme Court Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

Patricia Coyle Gilman, Petitioner, requests that a writ of certiorari issue to review the judgment of the Connecticut Supreme Court entered May 21, 1992, refusing to review the decision of the Connecticut Appellate Court entered on February 13, 1992.[1]

OPINION BELOW

The opinion of the Connecticut Supreme Court is officially reported at 220 Conn. 909 (1992). It is reproduced

[1] Petitioner filed a Motion for Reargument and Motion for Reargument en Banc on February 24, 1992. That motion was denied on or about March 27, 1992.

in the Appendix to this Petition at App. p. 1. The underlying order of dismissal by the Connecticut Appellate Court is reproduced in the Appendix to this Petition at App. p. 2.[2]

JURISDICTION

The judgment of the Connecticut Supreme Court, declining to review the judgment of the Connecticut Appellate Court, was entered on May 21, 1992. The jurisdiction of this court is invoked pursuant to Title 28 United States Code § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "Nor shall any State deprive any person of life, liberty or property without due process of law . . . "

STATEMENT OF THE CASE

This case involves the dismissal by the Connecticut Appellate Court of the appeal of the Petitioner in a marital dissolution action based solely on her counsel's inability, because of family and medical emergencies, to file the

[2] The dismissal order refers to the "Motion of Defendant filed January 21, 1992, to Set Aside the Dismissal." In fact, no dismissal had previously been entered.

brief on appeal prior to the due date, even though the appellant-petitioner's brief was finished and submitted to the Court for filing before the dismissal was entered.

The marital dissolution action was originally tried in the Superior Court in New Haven in March, 1991. A Memorandum of Decision was issued on May 13, 1991, dissolving the marriage and entering certain financial orders. An appeal was timely filed on May 23, 1991.

After the transcript was delivered on September 16, 1991, petitioner sought and received several extensions of time to file her brief. The final extension expired on December 31, 1991. The brief was not filed on December 31, 1991, solely because of counsel's personal medical and family situation.[3] On January 6, 1992, the Appellate Court

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[3] During mid-October, 1991 counsel became ill for five days. Upon return to work, she immediately began to select a jury in a state court criminal trial. On November 11, 1991, as evidence was scheduled to begin in that case, counsel became ill with pneumonia, and was unable to work until November 25, 1991. On November 24, 1991, counsel's mother-in-law suffered a stroke; she required care and attention until she died on December 4, 1991. On December 3, 1991, counsel began a murder trial, which was recessed for several days to permit counsel's attendance at the funeral. Counsel's family observed a period of mourning until December 12, 1991. The murder trial went to verdict on December 23, 1991.

On December 26, 1991, counsel was suddenly called to New Jersey to attend to her terminally ill, elderly aunt who was hospitalized with congestive heart failure. Counsel is the trustee and the only relative responsible for the care of this eighty-nine year old aunt who is bedridden in a convalescent care facility in New Jersey. During this same week, counsel suffered a neurological impairment of several days duration. She has been under

ordered that unless the brief was filed on or before January 21, 1992, the appeal would be dismissed.

Counsel for petitioner thereafter filed two motions requesting relief from that order, detailing the family and medical circumstances of petitioner's counsel, and seeking an extension of time to file the brief until January 31, 1992 (first motion) and February 11, 1992, (second motion). See Appendix, pp. A-3 – A-14. No action was taken on those motions prior to February 11, 1992. However, oral argument was scheduled by the Appellate Court for February 13, 1992.

The appellant's brief and appendix were actually delivered to the Clerk of the Appellate Court for filing on February 11, 1992, but the Clerk refused to permit petitioner to file them, pending the oral argument scheduled for February 13, 1992. Following the oral argument on February 13, the motions were denied and the appeal was

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treatment for this chronic condition for several years and is from time to time debilitated by sudden onset of this illness.

In early January, 1992, counsel's aunt recovered from congestive heart failure but was hospitalized with pneumonia and complications of pneumonia on January 14, 1992; it was predicted that she would not survive, but after twelve days of hospitalization, she was returned to the convalescent care facility. Attention to this childless, elderly aunt required petitioner's counsel to spend numerous days, evenings and weekends in New Jersey. Three of these trips had to be made on an emergency basis, when it appeared that death was imminent. See "Motion for Relief from Order Requiring Filing of Defendant-Appellant's Brief on or Before January 21, 1992," dated January 20, 1992, reprinted in Appendix, beginning at A-3, and "Motion for Relief from Order Requiring Filing of Defendant-Appellant's Brief on or Before January 21, 1992," dated January 30, 1992, reprinted in Appendix, beginning at A-9.

dismissed.[4] A timely motion for reargument and reargument en banc was denied by the Appellate Court without explanation on March 27, 1992. A Petition for Certification was then filed in the Connecticut Supreme Court, relying on petitioner's due process rights under the federal and state constitutions. It was denied on May 21, 1992, with no statement of reasons, but with one Justice of the Connecticut Supreme Court dissenting, who opined that the Petition for Certification should be heard. App. p.1.

REASONS FOR GRANTING THE WRIT

A. ACCESS TO THE COURTS TO DISSOLVE MARRIAGES IS CONSTITUTIONALLY-PROTECTED.

Access to the courts to dissolve a marriage is protected by the due process clause of the Fourteenth Amendment. *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). In *Boddie*, this Court held that the fundamental importance of marriage in our society and the state's monopolization of the means of dissolving it require states to permit indigent litigants free access to the courts to dissolve their marriages. The Due Process Clause implicates appellate rights as well and therefore insures litigants access to the appellate courts.

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[4] Apparently the Appellate Court treated the motions for relief from order as motions to set aside a dismissal, although no dismissal had been entered. A motion to dismiss the appeal was filed by the appellee, so the dismissal was not technically *sua sponte*, although the order so reads. *See*, App. p.2.

B. DUE PROCESS REQUIRES THAT PETITIONER BE PERMITTED TO PURSUE HER APPEAL FROM THE JUDGMENT DISSOLVING HER MARRIAGE.

Unlike the defendant in a criminal case, the civil appellant in a dissolution of marriage action does not have the avenue of collateral attack on a conviction available to her. Thus, the state court's dismissal of this appeal has the effect of irrevocably terminating petitioner's ability to seek an equitable distribution of marital property from the courts. Because of the fundamental interest at stake, and the good and sufficient reasons for counsel's late filing of the brief on appeal, due process does not permit such a result.

The right to appeal, even in civil cases, triggers fundamental constitutional protection and due process of law and concerns of fundamental fairness. The particular process that is due depends on a balancing of several factors: the private interest at stake, the risk of error created by the procedures of the tribunal and any countervailing government interests. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See also *Lloyd Carr & Co. v. Commodity Futures Trading Commission*, 567 F.2d 1193 (2d. Cir. 1977).

Here, the private interest at stake – the petitioner's financial interest in the estate of a ten-year marriage – is enormous, while the risk to the orderly administration of justice and docket control of the state Appellate Court is minimal. Even assuming that the judiciary has an interest in minimizing fiscal burdens and administrative delays,

there is simply no reason, under the extraordinary circumstances of this case, to deny petitioner her right to an appeal on the merits.

In sum, the actions of the state appellate courts in dismissing petitioner's appeal, without considering its merits, due solely to her counsel's justifiable inability to file the brief within the time period required, constitutes a denial of due process and requires reinstatement of the appeal.

CONCLUSION

For the reasons stated above, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Sue L. Wise
51 Elm St., Suite 409
New Haven, CT 06510
(203)562-9931
Attorney for Petitioner

No. _____

In The

Supreme Court of the United States

October Term, 1992

PATRICIA COYLE GILMAN,

Petitioner,

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Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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ROBERT H. GILMAN v. PATRICIA COYLE GILMAN

The defendant's petition for certification for appeal from the Appellate Court is denied.

BERDON, J., dissenting. I would grant the petition for certification.

Sue L. Wise, in support of the petition.

Lee Marlow, in opposition.

Decided May 21, 1992

APPELLATE COURT

STATE OF CONNECTICUT

AC 10275

ROBERT H. GILMAN

v.

PATRICIA COYLE GILMAN : February 13, 1992

ORDER

THE MOTION OF THE DEFENDANT, FILED JANUARY 21, 1992, TO SET ASIDE THE DISMISSAL ORDER, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

ORDERED DENIED. IT HEREBY **ORDERED**, SUA SPONTE, THAT THE APPEAL IS DISMISSED.

/s/ Cynthia M. Gworek
CYNTHIA M. GWOREK
ASSISTANT
CLERK-APPELLATE

Notice sent: February 14, 1992
Weber & Marshall
Sue L. Wise
Cohen, Rubin, Marlow & Eldrich
Clerk, NNH, 290375
Hon. Anthony V. DeMayo
PAC

No Record
Transcript Filed
No Exhibits

NO. A.C. 10275

ROBERT H. GILMAN	:	APPELLATE COURT
VS.	:	STATE OF CONNECTICUT
PATRICIA COYLE GILMAN	:	JANUARY 20, 1992

MOTION FOR RELIEF FROM ORDER REQUIRING FILING OF DEFENDANT-APPELLANT'S BRIEF ON OR BEFORE JANUARY 21, 1992

Pursuant to §4040 of the Practice Book, the defendant-appellant through the undersigned counsel moves for relief from an order that defendant-appellant's brief be filed on or before January 21, 1992 and requests an extension of time in which to file her brief until January 31, 1992. In support of this motion, the undersigned represents:

1. The transcript was delivered to the undersigned counsel on September 16, 1991.

2. An extension for filing the defendant-appellant's brief was requested and granted until December 31, 1991.

3. This court ordered that the brief be filed on or before January 21, 1992 or the appeal would be dismissed. 4. [sic] As of this writing because of illness of the undersigned counsel and the sudden onset of a terminal illness of a close family member the undersigned has nocompleted [sic] the writing of the brief.

5. The research on several complex issues has been completed, but the brief has not yet been completed.

6. The undersigned counsel contacted counsel for the plaintiff-appellee and he indicated his sympathy for

the position of the undersigned, but was constrained not to agree to the granting of this motion.

6. [sic] It is respectfully requested that an extension of time until January 31, 1992 be granted because of the personal [sic] of the undersigned counsel.

THE DEFENDANT-APPELLANT

BY _____

SUE L. WISE
Williams and Wise
51 Elm St., Suite 409
New Haven, CT 06510
(203) 562-9931
Her Attorney

ORDER

The foregoing Objection having been heard, it is hereby ORDERED:

GRANTED / DENIED

BY THE COURT

_____

Chief Clerk

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid on this 20th day of January, 1992, to:

Lee Marlow, Esq.
Law Offices of Cohen & Rubin
P.O. Box 1800
New Haven, CT 06507-1800

SUE L. WISE

NO. A.C. 10275

ROBERT H. GILMAN	:	APPELLATE COURT
VS.	:	STATE OF CONNECTICUT
PATRICIA COYLE GILMAN	:	JANUARY 20, 1992

SECTION 4041 STATEMENT

I. BRIEF HISTORY OF THE CASE:

1. This matter was tried for several days in March, 1991. A Memorandum of Decision was issued by the trial court (DeMayo, J.) on May 13, 1991. A motion for articulation was filed by the defendant-appellant on May 23, 1991. An articulation was filed by the trial court on July 31, 1991. The transcript was delivered on September 16, 1991.

2. This appeal was filed on May 23, 1991 and an extension of time was granted until December 31, 1991, and the brief not having been filed an order requiring the filing of the brief on or before January 21, 1992 was entered.

II. SPECIFIC FACTS RELIED UPON:

The moving party relies for an extension of time upon the fact that undersigned counsel has been continually involved in trial of several matters, and matters involving post-trial motions in this matter including responding to a Motion to Dismiss Appeal. The undersigned intended to file the brief by December 31, 1991, but because of the sudden onset of a neurological illness the undersigned was unable to complete the brief. In discussing this matter with Cynthia M. Gworek, Assistant

Clerk-Appellate the undersigned explained the difficulty of having the brief completed, but did not anticipate any problem having the brief completed before January 21, 1992. However, an elderly family member for whom the undersigned is trustee and conservator was suddenly taken ill with what appears at this juncture to be a terminal illness over the weekend of January 17th. This turn of events required that the undersigned by [sic] out of the state for several days to care for this aged family member.

III. LEGAL GROUNDS RELIED UPON:

The moving party relies on Sections 4040 and 4041 for the relief requested.

The undersigned counsel has not been able to ascertain the position of counsel for the plaintiff-appellee in relation to this request.

THE DEFENDANT-APPELLANT

BY _____

SUE L. WISE
Williams and Wise
51 Elm St., Suite 409
New Haven, CT 06510
(203) 562-9931
Her Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, on this 20th day of January, 1992 to:

Lee Marlow, Esq.
Law Offices of Cohen
& Rubin
P.O. Box 1800
New Haven CT 06507-1800

Ms. Patricia C. Gilman
P.O. Box 16721
West Haven, CT 06516

SUE L. WISE

NO. A.C. 10275

ROBERT H. GILMAN	:	APPELLATE COURT
VS.	:	STATE OF CONNECTICUT
PATRICIA COYLE GILMAN	:	JANUARY 30, 1992

MOTION FOR RELIEF FROM ORDER REQUIRING FILING OF DEFENDANT-APPELLANT'S BRIEF ON OR BEFORE JANUARY 21, 1992

Pursuant to § 4040 of the Practice Book, the defendant-appellant through the undersigned counsel moves for relief from an order that defendant-appellant's brief be filed on or before January 21, 1992 and requests an extension of time in which to file her brief until February 11, 1992. In support of this motion, the undersigned represents:

1. The transcript was delivered to the undersigned counsel on September 16, 1991.

2. An extension for filing the defendant-appellant's brief was requested and granted until December 31, 1991.

3. This court ordered that the brief be filed on or before January 21, 1992 or the appeal would be dismissed.

4. As of this writing because of illness of the undersigned counsel and the sudden onset of a terminal illness of a close family member the undersigned has not completed the writing of the brief. The undersigned is the trustee and the only relative responsible for the care of her eighty-nine year old aunt who is bedridden in a

convalescent care facility in New Jersey. This aunt was taken ill with pneumonia and complications of pneumonia in mid-January; she is and has been, for over more than ten days near death, and it is predicted that she will not survive. Attention to this aunt who is moribund has required the undersigned to spend numerous days, evenings and weekends in New Jersey. Several of these trips have had to be made on an emergency basis.

5. The research for the appellant's brief has been completed, and the appendix to the brief has been completed, but the defendant-appellant's brief has not yet been completed.

6. Prior to filing a motion for relief originally requested, the opportunity to file the brief of the defendant-appellant on or before January 31, 1992, the undersigned counsel contacted counsel for the plaintiff-appellee who indicated his sympathy for the personal problems of the undersigned, but was constrained not to agree to the granting of this motion. Subsequently counsel for the plaintiff-appellee has filed a formal objection to the original request for extension of time.

6. It is respectfully requested that an extension of time until February 11, 1992 be granted because of the

continuing personal responsibilities of the undersigned counsel.

THE DEFENDANT-APPELLANT

BY /s/ Sue L. Wise
SUE L. WISE
Williams and Wise
51 Elm St., Suite 409
New Haven, CT 06510
(203) 562-9931
Her Attorney

ORDER

The foregoing Objection having been heard, it is hereby ORDERED:

GRANTED / DENIED

BY THE COURT

_____

Chief Clerk

NO. A.C. 10275

ROBERT H. GILMAN	:	APPELLATE COURT
VS.	:	STATE OF CONNECTICUT
PATRICIA COYLE GILMAN	:	JANUARY 30, 1992

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1. This matter was tried for several days in March, 1991. A Memorandum of Decision was issued by the trial court (DeMayo, J.) on May 13, 1991. A motion for articulation was filed by the defendant-appellant on May 23, 1991. An articulation was filed by the trial court on July 31, 1991. The transcript was delivered on September 16, 1991.

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discussing this matter with Cynthia M. Gworek, Assistant Clerk-Appellate the undersigned explained the difficulty of having the brief completed, but did not anticipate any problem having the brief completed before January 21, 1992. However, an elderly family member for whom the undersigned is trustee and conservator was suddenly taken ill with what appears at this juncture to be a terminal illness over the weekend of January 17th. This turn of events required that the undersigned be out of the state for several days to care for this aged family member. As of this writing the elderly family members [sic] continues to be in grave condition, which requires the personal attendance of the undersigned counsel out of state.

III. LEGAL GROUNDS RELIED UPON:

The moving party relies on Sections 4040 and 4041 for the relief requested.

The undersigned counsel ascertained that counsel for the plaintiff-appellee has objected to the motion for relief from the order.

THE DEFENDANT-APPELLANT

BY /s/ Sue L. Wise
SUE L. WISE
Williams and Wise
51 Elm St., Suite 409
New Haven, CT 06510
(203) 562-9931
Her Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, on this 20th day of January, 1992 to:

Lee Marlow, Esq.
Law Offices of
Cohen & Rubin
P.O. Box 1800
New Haven, CT
06507-1800

Ms. Patricia C. Gilman
P.O. Box 16721
West Haven, CT 06516

/s/ Sue L. Wise
SUE L. WISE

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid on this 30th day of January, 1992, to:

Lee Marlow, Esq.
Law Offices of Cohen & Rubin
P.O. Box 1800
New Haven, CT 06507-1800

/s/ Sue L. Wise
SUE L. WISE